

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Ron)	
Mosley,)	
)	
Complainant,)	
)	
v.)	Case No. 11-1494-EL-CSS
)	
The Dayton Power and Light Company,)	
)	
Respondent.)	

OPINION AND ORDER

The Commission, considering the public hearing held on September 22, 2011, and February 12, 2013, issues its opinion and order.

APPEARANCES:

Mr. Ron Mosely, 900 Willow Brook Ct., Dayton, Ohio 45424, on his own behalf.

Mr. Joseph Strines, 1065 Woodman Drive, Dayton, Ohio 45432, on behalf of Dayton Power & Light.

OPINION:

I. History of the Proceeding

On March 29, 2011, Mr. Ron Mosley (complainant) filed a complaint against the Dayton Power and Light Company (DP&L or respondent). In his complaint, Mr. Mosley alleged that DP&L estimated his bill for several years. He also alleged that DP&L charged him for service that he did not use and demanded from him the amount of \$2,187.14 for service charges. Mr. Mosely added that notwithstanding that he paid his bill each month DP&L continued to add late payment charges, ultimately leading to the disconnection of his service on March 19, 2011. For relief, Mr. Mosely seeks the sum of \$20,000.

On April 13, 2011, DP&L filed an answer, motion to strike, motion to dismiss, and request for mediation. Pointing to the Commission's lack of authority to award monetary damages, DP&L moved to strike the complainant's request for monetary damages. The complainant filed a response to DP&L's pleading on June 13, 2011. The complainant opposed DP&L's motion to dismiss and renewed his demand for relief.

On June 21, 2011, the attorney examiner issued an entry scheduling this matter for a settlement conference to occur on July 13, 2011. The parties convened as scheduled but were unable to reach a settlement. Thereafter, the attorney examiner issued an entry on August 5, 2011, scheduling a hearing for September 22, 2011. At the hearing, the complainant began to testify and present exhibits that had not been provided as responses to DP&L's discovery requests. Upon the request of DP&L, without objection from the complainant, the attorney examiner adjourned the hearing to allow additional discovery.

By entry issued November 8, 2011, the attorney examiner scheduled the continuation of the hearing for December 7, 2011. On November 15, 2011, DP&L filed a motion to compel the complainant to respond to interrogatories and requests for production of documents. DP&L amended its motion on November 17, 2011. DP&L explained that, after the hearing, it had issued repeated requests to obtain discovery responses from the complainant. On December 19, 2011, the attorney examiner ordered the complainant to respond to DP&L's discovery requests by January 17, 2012. On January 26, 2012, the complainant filed a pleading that appeared, in part, to levy additional claims of unfair practices against DP&L. The complainant also stated his refusal to comply with discovery requests.

At the request of the complainant, the attorney examiner, by entry issued December 1, 2011, continued the prehearing conference from November 30, 2011, to December 14, 2011, and continued the hearing indefinitely.

On February 28, 2012, DP&L filed a motion to dismiss the complaint with prejudice, on the grounds that the complainant failed to comply with the attorney examiner's order to compel. The complainant did not respond to DP&L's pleading. On April 4, 2012, the attorney examiner issued an entry granting the complainant another opportunity to respond to DP&L's discovery requests, warning the complainant that sanctions could follow noncompliance. On July 26, 2012, DP&L renewed its motion to dismiss the complaint with prejudice. On October 31, 2012, the Commission issued an entry in which it directed the attorney examiner to complete the hearing. The Commission, however, barred the complainant from introducing documentary evidence that should have been served pursuant to DP&L's discovery requests. The attorney examiner scheduled the hearing for February 12, 2013.

II. The Law

DP&L is an electric light company as defined by Section 4905.03(A)(3), Revised Code, and a public utility by virtue of Section 4905.02, Revised Code. DP&L is, therefore, subject to the jurisdiction of the Commission pursuant to Sections 4905.04 and 4905.05, Revised Code.

Section 4905.26, Revised Code, requires that the Commission set for hearing a complaint against a public utility whenever reasonable grounds appear that any rate

charged or demanded is in any respect unjust, unreasonable, or in violation of law or that any practice affecting or relating to any service furnished is unjust or unreasonable.

In complaint proceedings, the burden of proof lies with the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St. 2d 189, 214 N.E. 2d 666 (1966).

III. Hearing

At the September 22, 2011, hearing, Mr. Mosely testified on his own behalf and presented billings to support his claim that DP&L improperly charged him for electrical service. Mr. Mosely claimed that he had paid his bills. Mr. Mosely continued to produce bills, but DP&L pointed out that he did not provide corresponding evidence of payment. To contest the \$2,187.14 that was in dispute, Mr. Mosely discussed line items for each bill dating from January 2004 to the present. DP&L claimed that none of the amount in dispute accrued prior to June 13, 2008. The attorney examiner, therefore, allowed DP&L to put on its witness to offer evidence that the entire amount in dispute stemmed from June 13, 2008.

At the September 22, 2011, hearing, DP&L called as its witness, Ms. Lisa Brown, the Public Utilities Commission of Ohio Liaison for DP&L. Ms. Brown testified that the complainant was a percentage of income payment plan (PIPP) customer and owed \$36.09 on June 13, 2008. For her testimony, she explained each debit and credit to Mr. Mosley's account. At the continuation of the hearing on February 12, 2013, Ms. Brown continued her testimony, concluding that the complainant owed \$4,008.81 as of February 4, 2013. Mr. Mosely did not appear at the February 12, 2013, hearing.

Ms. Brown pointed out that PIPP customers pay a reduced amount during the winter season. They are instructed to pay the actual billed amount during the summer season (Tr. 39-40). Ms. Brown noted that the complainant was initially enrolled in PIPP in 2010 (Tr. 76). Ms. Brown stated that in December 2010 the complainant elected to be removed from PIPP (Tr. 77). As a result, his full account balance became due and was billed to him. At the time of the hearing, Ms. Brown testified that the complainant should be paying his current billed amount in full (Tr. 76). Because Mr. Mosley failed to appear at the hearing and because he did not respond to discovery requests, DP&L again moved to dismiss the complaint with prejudice (Tr. 65-66).

IV. Discussion and Conclusion

In his complaint, Mr. Mosely denies that he owes DP&L the sum of \$2,187.14 for electric service. Mr. Mosely sought to prove that this sum is inaccurate by challenging his billings, beginning from January 2, 2004. Mr. Mosely intended to produce each monthly billing, until the present, to show that \$2,187.14 was inaccurate. DP&L contested this approach because the complainant had not provided the billings in response to discovery requests and because, under DP&L's record retention policy, it did not have records

dating back to 2004. DP&L also attacked the relevance of the complainant's evidence by having its witness present evidence to show that the sum of \$2,187.14 did not begin to accumulate until after June 13, 2008, not January 2, 2004.

At the September 22, 2011, hearing, the complainant failed to provide any evidence of payment or any challenge to the billing evidence provided by DP&L. The complainant was given the opportunity to present evidence at the continuation of the hearing upon the condition that he respond to discovery requests. Despite several opportunities, the complainant explicitly refused to respond to discovery requests. Moreover, the complainant failed to appear at the continuation of the hearing on February 12, 2013.

In this proceeding the complainant bore the burden of proving the allegations of the complaint. *Grossman v. Public. Util. Comm.*, 5 Ohio St. 2d 189, 214 N.E. 2d 666 (1966). By failing to present evidence in support of the complaint, by refusing to engage in discovery, and by failing to appear for the continuation of the hearing, the complainant has failed to sustain his burden of proof. Accordingly, the complaint should be dismissed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On March 29, 2011, Ron Mosely filed a complaint against DP&L alleging that DP&L estimated his bill for several years, that DP&L improperly charged him \$2,187.14, and that DP&L improperly added late payment charges to his bills.
- (2) On April 13, 2011, DP&L filed an answer, motion to strike, motion to dismiss, and request for mediation. For its answer, DP&L denied the material allegations of the complaint.
- (3) On June 21, 2011, the attorney examiner issued an entry scheduling this matter for a settlement conference to occur on July 13, 2011. The parties convened as scheduled but were unable to reach a settlement.
- (4) On August 5, 2011, the attorney examiner issued an entry scheduling a hearing for September 22, 2011. To allow completion of discovery, the attorney examiner adjourned the hearing.
- (5) By entry issued November 8, 2011, the attorney examiner rescheduled the conclusion of the hearing for December 7, 2011. The attorney examiner also scheduled a prehearing conference for November 30, 2011.
- (6) On November 15, 2011, DP&L filed a motion to compel the complainant to respond to interrogatories and requests for

production of documents. DP&L amended its motion on November 17, 2011. DP&L explained that after the September 22, 2011, hearing, it had made repeated attempts to obtain discovery responses from the complainant.

- (7) On December 19, 2011, the attorney examiner ordered the complainant to respond to DP&L's discovery requests by January 17, 2012. On January 26, 2012, the complainant filed a pleading in which he lodged additional claims of unfair practices against DP&L and stated his refusal to comply with discovery requests.
- (8) On December 1, 2011, the attorney examiner issued an entry to continue the prehearing conference from November 30, 2011, to December 14, 2011. The attorney examiner also continued the hearing indefinitely.
- (9) On February 28, 2012, DP&L filed a motion to dismiss the complaint with prejudice on the grounds that the complainant failed to comply with the attorney examiner's order to compel. On April 4, 2012, the attorney examiner issued an entry granting the complainant another opportunity to respond to DP&L's discovery requests.
- (10) On July 26, 2012, DP&L renewed its motion to dismiss the complaint with prejudice.
- (11) On October 31, 2012, the Commission issued an entry in which it directed the attorney examiner to complete the hearing.
- (12) On December 17, 2012, the attorney examiner scheduled a hearing for February 12, 2013. The hearing took place as scheduled.
- (13) DP&L is a public utility and an electric company pursuant to Sections 4905.02 and 4905.03, Revised Code. Thus, DP&L is subject to the jurisdiction of this Commission under the authority of Sections 4905.04 through 4905.06, Revised Code.
- (14) This complaint is properly before the Commission pursuant to the provisions of Sections 4905.22 and 4905.26, Revised Code.
- (15) In a complaint case, the burden of proof is on the complainant. *Grossman v. Public. Util. Comm.*, 5 Ohio St. 2d 189, 214 N.E. 2d 666 (1966).


- (16) The complainant has failed to carry the burden of proof that DP&L billed him incorrectly for service or that it improperly estimated his bills.

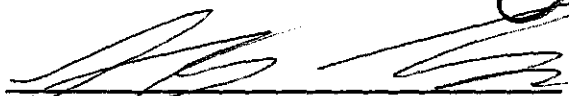
It is, therefore,

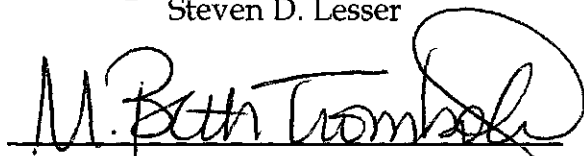
ORDERED, That, in accordance with the findings and conclusions in this opinion and order, the complaint be dismissed. It is, further,

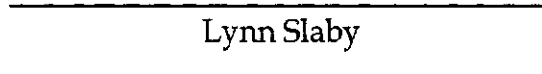
ORDERED, That a copy of this opinion and order be served upon the parties and all interested persons of record.


THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser


M. Beth Trombold

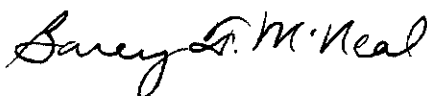

Lynn Slaby


Asim Z. Haque

LDJ/vrm

Entered in the Journal

JUL 10 2013



Barcy F. McNeal
Secretary